

DEPARTMENT OF STATE REVENUE

**LETTER OF FINDINGS NUMBER: 95-0178 CS
Controlled Substance Excise Tax
For The Tax Periods: 1995**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

Controlled Substance Excise Tax - Possession

Authority: IC 6-7-3-5

The taxpayer protests assessment of controlled substance excise tax.

STATEMENT OF FACTS

On November 7, 1994, taxpayer was arrested for possession of cocaine. Based on taxpayer's possession of cocaine, the Department issued a jeopardy assessment against the taxpayer on February 1, 1995. The taxpayer filed a protest of the assessment via counsel dated February 9, 1995. Counsel was contacted to schedule an administrative hearing regarding the protest. Counsel informed the Department that he had not heard from taxpayer since April 1995. Counsel stated that taxpayer failed to appear in court regarding his criminal charges. Presently, a bench warrant is outstanding for his arrest. Subsequent attempts to contact the taxpayer were made. A hearing was scheduled for taxpayer to address his protest. Taxpayer failed to appear. Using the best information available, efforts were made to contact taxpayer and taxpayer failed to respond. This determination is made based on the original protest filed with the Department.

Additional facts will be provided as necessary.

DISCUSSION

Indiana Code 6-7-3-5 states:

The controlled substance excise tax is imposed on controlled substances that are:

- (1) delivered,
- (2) possessed; or
- (3) manufactured;

in Indiana in violation of IC 35-48-4 or 21 U.S.C. 841 through 21 U.S.C. 852.

Taxpayer must prove by a preponderance of the evidence that he neither possessed, nor delivered, nor manufactured the marijuana upon which controlled substance excise tax was imposed. Without evidence to rebut the presumption that he is liable for the tax, based on the information in the file, the Department finds that taxpayer is responsible for the CSET assessment.

FINDING

The taxpayer's protest is denied.